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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,629	03/23/2000	RAZI VAGO	229752001000	2656

7590 01/23/2002

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WASHINGTON, DC 20006-1888

EXAMINER

PHAN, HIEU

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 01/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/446,629

Applicant(s)

VAGO, RAZI

Examiner

Hieu Phan

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 3 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Damien et al. (U.S. Patent 5,563,124).

Damien et al. disclosed a medical product made from Acropora as is claimed (Abstract, column 2 lines 65-67 and column 3 lines 1-18 and 44-62).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (EP 0 395 187 A2) in view of Damien et al. (U.S. Patent 5,563,124).

White et al. disclosed a biomaterial made from coral with bioactive substances such as antibiotic and growth factors (page 2 lines 23, page 3 lines 5-25 and 45-51, page 4 lines 29-36, page 5 lines 50-54 and page 8 lines 1-20 and 35-49) as is claimed. White et al. fail to disclose the product or structure is form from coral of an Acropora species.

Damien et al. disclosed an osteogenic product made from Acropora coral (Abstract, column 2 lines 65-67 and column 3 lines 1-18 and 44-62). The advantage of using Acropora coral is the Acropora species have a lower porosity (about 20%) compare to the Porites species (50% porosity), which make the Acropora a stronger material. The Acropora material is ideal to use for the repair of bone defects that require a material to withstand a higher compression force.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Damien et al. to modify the apparatus White et al. to have the product or structure is form from coral of an Acropora species.. The motivation for incorporating the feature of Damien et al. into the apparatus of White et al. the Acropora species have a lower porosity (about 20%) compare to the Porites species (50% porosity), which make the Acropora a stronger material. The Acropora material is ideal to use for the repair of bone defects that require a material to withstand a higher compression force.

### ***Conclusion***

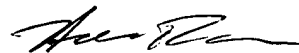
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is (703) 308-8969. The examiner can normally be reached on Mon.-Fri. from 8:30 a.m. to 6:00 p.m.

Application/Control Number: <sup>09/446,629</sup>~~09/446,929~~  
Art Unit: 3738

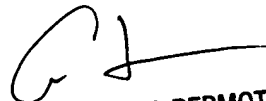
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax number for this group is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceedings should be directed to the group receptionist whose telephone number is (703) 308-0858.



Hieu Phan



CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700